

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

Criminal Appeal No.56 of 2000.

Date of decision: 10.5.2007

State of H.P.

..Appellant.

Versus

Raj Pal

..Respondent

Coram

The Hon'ble Mr. Justice Surjit Singh, J.

Whether approved for reporting ?¹ No.

For the Appellant : Mr. Ashok Chaudhary, Addl. A.G.

**For the respondent : Mr. Dinesh Thakur, Advocate,
vice Mr. Rakesh Jaswal, Advocate.**

Surjit Singh, J.(oral)

Heard and gone through the record.

Respondent-accused was sent up for trial for an offence punishable under Section 354 of the Indian Penal Code for allegedly assaulting a lady with intent to outrage her modesty. The incident was alleged to have taken place on 14.4.1995 around 6 p.m. Matter was reported to the police on the next following day around 4.30 p.m. As per the report lodged with the police, i.e. FIR Ext.PW6/A, the respondent assaulted the prosecutrix when she was returning from the fields with a bundle of hay. The respondent allegedly pushed her from behind and threw her on the ground and then tried to loosen the string of her salwar. The prosecutrix raised alarm,

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

hearing which Baldev Singh (PW3) and Dhani Ram (PW4) were attracted to the scene. On seeing these two persons, the respondent fled away.

The police investigated the case and challaned the respondent. Substance of accusation was put to him. He pleaded not guilty. Therefore, trial was held. At the end of the trial, the learned Judicial Magistrate held that the prosecution had failed to prove the case and consequently, acquitted the respondent. The State came in appeal to this Court and the appeal was admitted.

I have heard learned Additional Advocate General as also the learned counsel for the respondent.

The learned trial Magistrate has observed that the prosecutrix while in the witness box as PW-1 did not say even a word about her raising alarm and witnesses Baldev Singh (PW3) and Dhani Ram (PW4) coming to the spot and then the respondent fleeing away. The trial Court has further held that though Baldev Singh (PW3) and Dhani Ram (PW4) have said that they were attracted to the scene by the cries of the prosecutrix, but when the prosecutrix herself did not say that she raised cries, version of Baldev Singh (PW3) and Dhani Ram (PW4) could not be believed.

I have perused the record. What the prosecutrix stated in the Court, on oath, while appearing as PW-1, is that when the respondent tried to loosen the string of her salwar, she got stunned, meaning thereby that she did not raise any alarm. She did not say that she raised any alarm and that Baldev Singh (PW3) and

Dhani Ram (PW4) were attracted by the said alarm or they reached the place of occurrence by chance. When the prosecutrix herself did not say anything about her raising cries or the witnesses reaching the scene of crime and witnessing the incident, the testimony of Baldev Singh (PW3) and Dhani Ram (PW4) becomes somewhat doubtful. Testimony of the prosecutrix is contradicted by the earliest version. It has also come on record that the parties were not on good terms.

In view of the above stated position, the appeal is dismissed.

May 10, 2007(ss)

(Surjit Singh), J